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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 412

THE FIRST NATIONAL BANK OF CHICAGO, EDGAR STANTON AND JOSEPH C. BELDEN, TRUSTEES FOR THE REW TRUST, TRANSFEREES,

*Petitioners,*

*vs.*

COMMISSIONER OF INTERNAL REVENUE,

*Respondent.*

## REPLY OF PETITIONERS TO RESPONDENT'S BRIEF IN OPPOSITION.

HERBERT POPE,
FRANCIS H. URIELL,
BENJAMIN M. PRICE,
*Counsel for Petitioners.*

October 8, 1940.

THE DUNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

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Respondent's Brief in Opposition in this case was not only served too late under the rules of this Court, as we understand them, but Government counsel misstate the ground upon which the Circuit Court of Appeals based its decision. It states that Section 281(a) was referred to by that Court as "merely illustrative of the settled principle that an executor takes the place of the decedent."

What the Circuit Court of Appeals held was that "Under Section 281 (a) the executors upon qualification, so far as the liability of Rew for income tax was concerned, assumed the power, rights, duties and privileges of the taxpayer." That could not be true because that Section admittedly had not then been enacted; and the Second Circuit Court of Appeals expressly held that this Section could not

operate retroactively. *Liberman's Committee* v. *Commis*
*sioner,* 54 F. (2d) 527. As to any "settled principle" th
Court of Appeals said: "We cannot rely entirely upon th
ordinary rules governing privity of parties or of estates,"
and based its decision upon "the theory of income taxa
tion." The only statute cited was Section 281(a).

There is not only no "settled principle that an executo
takes the place of the decedent," but the decisions of th
Court and of the Supreme Court of Illinois and of all othe
courts are to the contrary. No case is cited by the Cou
of Appeals or by Government counsel which supports th
alleged "settled principle." The decision of this Court
*Ingle* v. *Jones,* 9 Wall. 486, 495, denies this "settled pri
ciple" both as to the statute of limitations and the questio
of *res judicata.* The decisions of the Supreme Court
Illinois are to the same effect, as was pointed out in th
petition in this case. In the Court of Appeals Governme
counsel tried to escape from the "settled principle" th
was settled against them by citing Section 281(a). No
they seek to escape from Section 281(a) to the "settl
principle" which the Court of Appeals ignored.

We submit that even in an income tax case the law
the country should be given some consideration.

Respectfully submitted,

HERBERT POPE,
FRANCIS H. URIELL,
BENJAMIN M. PRICE,
*Counsel for Petitione*

October 8, 1940.